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09/696,664	10/25/2000	Mark S. Abad	38-21(51721)B	5102

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Lawrence M. Lavin, Jr.
Patent Department, E2NA
Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, MI 63167

EXAMINER

BORIN, MICHAEL L

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1631

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Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1631



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/696,664
Filing Date: October 25, 2000
Appellant(s): ABAD ET AL.

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GROUP 1600

Thomas E. Holsten
Holly L. Prutz
David R. Marsh
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to appellant's Reply Brief filed 09/13/2004.

The Reply Brief filed 09/13/2004 addresses rejection under 35 USC § 112, first paragraph. First, Examiner disagrees with the heading "The Examiner's New Points of Argument". All that the following statement (p. 21, first paragraph)

There are two "written description" rejections of record; the first addressing "comprising" language, and the second - addressing "% identity" language. Appellant provides arguments only regarding the first "written description" rejection.

meant was that there was no response to the second rejection addressing “% identity language”. Second, the second title “a. The Rejection Raised Under 35 USC § 112, second paragraph” is not accurate as the discussed rejection is under 35 USC § 112, first paragraph.

As for appellant’s argument, Examiner does not find it persuasive. The arguments addressed in the Reply Brief are related to the issue of enablement of products “comprising” certain nucleic acid, be it nucleic acid of SEQ ID No. 3 itself, or another nucleic acid with sequence having certain % identity to SEQ ID No.3. The issue of the second rejection under 35 USC § 112, first paragraph is the lack of written description of nucleotide sequences having less than 100% identity to the elected SEQ ID No. 3. The latter issue is not addressed in the sections of specification addressed by the appellant.

For the above reasons, it is believed that the rejection should be sustained.
Respectively submitted,

Michael Borin
Primary Examiner

